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SUNDAY CLOSING LAWS IN CANADA: SOME PROVINCIAL COMPARISONS

Prepared by:

Catherine Evans
Legislative Research Service

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INTRODUCTION

Since this paper was written just over a year ago, there have already been amendments to the Sunday closing laws in four provinces.[1] This level of legislative activity demonstrates the intensity of the debate surrounding this issue.

Two Supreme Court of Canada decisions precipitated much of the current round of activity. In the first case the Supreme Court struck down the federal Lord's Day Act, R.S.C. 1970, c. L-11, as a violation of the freedom of conscience and religion provisions of the Canadian Charter of Rights and Freedoms.[2] In the second, it upheld Ontario's Retail Business Holidays Act, R.S.O. 1980, c. 453, as amended, against a Charter challenge brought under the right to liberty and freedom of religion provisions.[3] (A challenge to the same act under the equality rights section of the Charter will be heard by the Ontario Court of Appeal in the fall of 1988.)

The results in these cases meant that provincial legislatures have been made the focus of efforts from both sides of the issue for changes to Sunday closing laws. Not surprisingly, the changes that have emerged in the past year go both ways. In Manitoba and Ontario minor additions have been to the list of exemptions from Sunday and holiday closing requirements. (Ontario's act may change much more radically in the next year if amendments currently before the legislature are approved, which among other things, considerably expand the role of municipalities in making Sunday closing decisions.) In Saskatchewan, an option to close on a day other than Sunday has been introduced. In Nova Scotia, Sunday opening has been restricted by eliminating the authority previously held by municipalities to allow stores to stay open that under the provincial act would have been closed.

This paper is organized in two parts. The first part lists the provincial statutes that govern Sunday and holiday closing and provides a brief overview of some of the major features of each act. The second part looks at the same features, but presents them in greater detail and in the form of a table to allow easier comparison. The paper does not make an exhaustive comparison of the Sunday closing laws, but concentrates on matters such as what exemptions to holiday closings are allowed by the various statutes, what powers are given to the municipalities to determine store hours independently of the province,

and what options are given to Saturday-observers within the statute. Likewise the paper does not purport to enter into a discussion of the political issues in the Sunday closing debate. Its purpose is simply to provide information to those seeking to understand the difference between provincial Sunday closing laws in Canada.

PART I

Legislation Analyzed

For the sake of convenience, the ten provincial statutes analyzed in Part II of this paper have not been identified in the table by name, only by province. The statutes are the following:

Alberta	Municipal Government Amendment Act, 1985, S.A. 1985, c. 43.
British Columbia	Holiday Shopping Regulation Act, S.B.C. 1980, c. 17.
Manitoba	The Retail Businesses Holiday Closing Act, S.M. 1987, c. 7.
New Brunswick	Days of Rest Act, S.N.B. 1985, c. D-4.2, as amended.
Newfoundland	The Shops Closing Act, S.N. 1977, c. 107, as amended.
Nova Scotia	Retail Business Uniform Closing Day Act, S.N.S. 1985, c. 6, as amended.
Ontario	Retail Business Holidays Act, R.S.O. 1980, c. 453, as amended.
Prince Edward Island	Days of Rest Act, S.P.E.I. 1985, c. 12, as amended.
Quebec	Commercial Establishments Business Hours Act, R.S.Q. 1977, c. H-2, as amended.
Saskatchewan	Urban Municipalities Act, R.S.S. 1978, c. U-11, as amended.

In some provinces, there are also Lord's Day or Sunday observance acts in addition to the statutes identified above. However, in the wake of the Supreme Court decision overturning the federal Lord's Day Act, mentioned above, several provinces have repealed their acts and the status of the remainder is in doubt.

Type of Activity Covered by the Legislation

The provincial statutes examined below and in the table in Part II are, in some cases, concerned with Sunday and holiday closings in more than the retail business sector. In Alberta, New Brunswick and Prince Edward Island, the statutes either permit or mandate holiday closings in both the industrial and general business sectors as well as the retail sector. In Nova Scotia, while the main focus of the legislation is on retail business, the statute spills over into other activities for example, transportation and communications. In the remaining six provinces the statutes concern the retail business sector and no other. The first section of the table in Part II identifies the scope of each province's legislation in terms of its application to retail businesses, other businesses, and industries.

Retail Business Exemptions

In every province but Alberta, the legislation under study establishes a general prohibition against retail store operations on holidays including Sundays. In Ontario, s. 2(c) of the Retail Business Holidays Act says, for example:

> Every person carrying on a retail business in a retail business establishment shall ensure that no member of the public is admitted thereto and no goods or services are sold or offered for sale therein by retail on a holiday.

In Alberta, there is no such prohibition. Rather, with one exception the provincial act is silent and authority to enact closing laws has been delegated to the municipal governments. The one exception is businesses which are regulated by a separate act of the Legislature. Municipalities may not include these businesses within their closing by-laws.

In the remaining nine provinces, there are numerous exemptions to the laws prohibiting holiday shopping. An analysis of these exceptions reveals that there is a remarkable lack of uniformity in both the nomenclature and specifics of retail closing exemptions among the nine provinces. In broad outline, however, the statutes bear a closer relationship to each other.

The table lists more than fifty exemptions to retail store closing laws. Of this number only three – drugstores, restaurants and service stations are recognized in all nine provinces. In Ontario, however, the exemption in the case of a drugstore is encumbered by a requirement that there be no more than four employees engaged in serving the public on the holiday.

Exemptions that are found in a majority of provinces include: small food or convenience stores; fresh fruit and vegetable markets; confectionery stores; news-stands; hotels and motels; garden centres; laundromats; educational and recreational facilities; and tourist facilities.

Certain exemptions reflect regional or local interests; for example, Newfoundland's exemption for ship's supply stores, and the exemption in both Quebec and Saskatchewan for agricultural machinery sales. Still other exemptions can only be described as esoteric. The Quebec exemption for the sale of tombstones would fall into this category.

Manitoba has two broad exemptions not confined to particular kinds of retail businesses. The first is stores which have four or fewer employees serving the public on a holiday regardless of what they sell and the second is stores that are normally open 24 hours a day in which six persons are employed, though not more than two are present at any one time during the day.

In almost every province there is, as well, some provision for an exemption allowed by the Lieutenant-Governor in Council. This exemption can be either an alternative to, or in some cases, in addition to the special exemption permit noted below.

Special Exemption Permits

Special exemption permits allow the executive branch of a provincial government or its delegated representative to give specific authorization for a business to remain open. In New Brunswick, the Liquor Licencing Board is given this power in respect of all retail businesses. One of the functions of the special permit or specially ordered exemption, noted above, is to provide retailers in an area without municipal organization an equivalent regulatory authority.

Optional Saturday Closing

There are six provinces which allow a day other than Sunday to be chosen by a retailer as a weekly holiday. Each of these provinces, however, uses a different set of criteria to determine which retailers may exercise the option.

In New Brunswick and Prince Edward Island, any day of the week can be substituted for Sunday, but the retailer must demonstrate reasons of conscience or religion to justify the choice. In New Brunswick, a retailer must also apply for and obtain a special permit from the Board. Saskatchewan has recently added a similar provision to its act. This amendment allows retailers with store areas less than 500 square meters to close on a day other than Sunday where they have religious reasons for so doing.

In Manitoba, Ontario and Quebec, while there is no requirement for establishing grounds of religion or conscience to justify the option, only Saturday is available as an alternative closing day. In Manitoba, an additional requirement is that a store owner must exercise the option in respect of all the stores he or she owns and not, for example, allow some stores to be open on Saturdays and some on Sundays. In Ontario, only stores with seven or fewer employees serving the public on the holiday and having a floor area of less than 5,000 square feet can exercise the option. (The amendments to Ontario's act mentioned earlier, will change this provision by both removing these restrictions and allowing a closing day other than Saturday to be chosen on religious grounds.) And finally in Quebec, only stores with three employees and with approval from the Minister can substitute Saturday closing.

Powers of Municipalities

The very great differences that actually exist in the way provinces observe, or do not observe, retail store closings, are to a large extent a function of the powers that have been given to the municipalities to control the hours and days of retail store operations. At one extreme is Alberta, discussed above, which, apart from reserving the regulation of retail stores governed by a separate act of the legislature to the province (e.g. beer and liquor stores), has delegated all responsibility for store closings to the municipalities.

At the other extreme are Prince Edward Island and Quebec, whose municipalities do not have authority to legislate in respect of store closings at all. In between those extremes are: Nova Scotia, where a limited authority is given to a municipality to order stores to close within its jurisdiction that would otherwise be allowed to remain open under the provincial act; Ontario, whose municipalities can order stores to close, but can also allow stores to remain open in areas which they designate as tourist areas; Manitoba, where municipalities have jurisdiction to regulate the days and hours of stores within municipalities designated as tourist areas by the Lieutenant Governor in Council; and finally British Columbia, New Brunswick, Newfoundland and Saskatchewan, whose municipalities have fairly broad authority to take over jurisdiction on store closings from the province by enacting by-laws. This authority in British Columbia, however, is restricted by the requirement that the proposed by-law be put to a referendum.

Offences

The maximum fines levied under the various statutes range from a low of $500 for a first offence in Newfoundland to a high of $50,000 for a second or subsequent offence in Manitoba. The Manitoba fine schedule came into effect on February 27, 1987, following the passage of an emergency bill designed to clamp down on Sunday openings among large grocery retailers in Winnipeg.[4] Only Manitoba, New Brunswick, Newfoundland and Quebec have established minimum fines for first offences. Alberta has a minimum fine for second and third offences.

Newfoundland is the only province where an individual violating the Act can be sentenced to a term of imprisonment (six months) on third conviction.

PART II

COMPARISONS OF SUNDAY CLOSING LAWS IN CANADA - BY PROVINCE

	Alberta	B.C.	Manitoba	N.B.	Nfld.	N.S.	Ontario	P.E.I.	Quebec	Sask.
TYPE OF ACTIVITY COVERED BY THE LEGISLATION										
Retail businesses	x	x	x	x	x	x	x	x	x	x
Other businesses	x			x		x		x		
Industries	x			x				x		
RETAIL BUSINESS EXCEPTIONS										
pharmacy or drugstore		x	x	x	x	x	x[1*]	x	x	x
grocery		x[1]		x[2]			x[2]	x[2]	x[2]	
convenience store					x					x[3]
fresh fruit and vegetables		x	x		x		x[4]			
seasonal produce stand - fruit and vegetable, horticulture products, seafood, dairy				x						
sales of farm produce by producer						x		x		x

* See end of Table for explanatory notes

	Alberta	B.C.	Manitoba	N.B.	Nfld.	N.S.	Ontario	P.E.I.	Quebec	Sask.
confectionery				x[2]	x				x	x
retail bakery										x
maple sugar products						x				
sundries		x[1]								
gift shop					x			x		x
antiques		x[1]					x[2]		x	x
handicrafts		x[1]					x[2]		x[5]	
works of art							x[2]		x[5]	
school supplies sold by a school cooperative									x	
tobacco products				x[2]			x[2]		x	x
news-stand		x[1]		x[2]	x		x[2]		x	x

	Alberta	B.C.	Manitoba	N.B.	Nfld.	N.S.	Ontario	P.E.I.	Quebec	Sask.
bookstore							•[2]		•	•
accommodation - hotel, motel, inn		•	•	•		•	•	•		
prepared meals - restaurant, take-out		•	•	•	•	•	•	•	•	•
sale of liquor under licence, permit or Act		•	•	•			•		•[3]	•
Société des alcool du Québec retail stores									•	
establishments with no more than 4 employees			•							
24 hour establishments			•[5]							
automobile service station		•	•	•	•	•	•	•	•	•
automobile rental						•	•			
boat rental						•	•			
automobile sales									•	•
trailer and boat sales									•	

PART II

COMPARISONS OF SUNDAY CLOSING LAWS IN CANADA - BY PROVINCE

	Alberta	B.C	Manitoba	N.B.	Nfld.	N.S.	Ontario	P.E.I	Quebec	Sask.
TYPE OF ACTIVITY COVERED BY THE LEGISLATION										
Retail businesses	x	x	x	x	x	x	x	x	x	x
Other businesses	x			x		x		x		
Industries	x			x				x		
RETAIL BUSINESS EXCEPTIONS										
pharmacy or drugstore		x	x	x	x	x	x[1*]	x	x	x
grocery		x[1]		x[2]			x[2]	x[2]	x[2]	
convenience store					x					x[3]
fresh fruit and vegetables		x	x		x		x[4]			
seasonal produce stand - fruit and vegetable, horticultural products, seafood, dairy				x						
sales of farm produce by producer						x		x		x

* See end of table for explanatory notes

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	Alberta	B.C.	Manitoba	N.B.	Nfld.	N S	Ontario	P.E.I.	Quebec	Sask.
confectionery				x[2]	x				x	x
retail bakery										x
maple sugar products						x				
sundries		x[1]								
gift shop					x			x		x
antiques		x[1]					x[2]		x	x
handicrafts		x[1]					x[2]		x[5]	
works of art							x[2]		x[5]	
school supplies sold by a school cooperative									x	
tobacco products				x[2]			x[2]		x	x
news-stand		x[1]		x[2]	x		x[2]		x	x

	Alberta	B.C.	Manitoba	N.B.	Nfld.	N.S.	Ontario	P.E.I.	Quebec	Sask.
bookstore							x[2]		x	x
accommodation - hotel, motel, inn		x	x	x		x	x	x		
prepared meals - restaurant, take-out		x	x	x	x	x	x	x	x	x
sale of liquor under licence, permit or Act		x	x	x			x		x[3]	x
Société des alcool du Québec retail stores									x	
establishments with no more than 4 employees			x							
24 hour establishments			x[6]							
automobile service station		x	x	x	x	x	x	x	x	x
automobile rental						x	x			
boat rental						x	x			
automobile sales									x	x
trailer and boat sales									x	

	Alberta	B.C.	Manitoba	N.B.	Nfld.	N.S.	Ontario	P.E.I	Quebec	Sask.
agricultural machinery sales									x	x
marina		x	x			x	x			
swimming pools and accessories									x	
tombstones									x	
garden centre		x	x	x		x	x		x	x
flower sales		x					x		x	
Christmas trees						x				
laundromat		x	x	x			x	x		
educational, recreational and amusement facilities - movie houses, theatres, exhibits		x	x	x		x	x	x		
tourist services, facilities and resorts			x			x	x[7]	x	x[8]	x
retail businesses within the boundries of a provincial or national park				x						
rental of sports and recreation equipment		x								

	Alberta	B.C.	Manitoba	N.B.	Nfld.	N.S.	Ontario	P.E.I.	Quebec	Sask.
ship's supplies					x					
emergencies or necessity					x	x		x	x	x
home heating fuel distributor					x					
activities exempt under the Lord's Day Act(s)		x	x				x			
business regulated by an act or special Act of the Legislature	x		x							
as declared, prescribed or ordered by the Lieutenant-Governor in Council		x			x	x	x	x	x	
SPECIAL EXEMPTION PERMITS										
issued by the Lieutenant-Governor in Council			x			x				
issued by a board under the Act				x						
issued by a magistrate, social worker or RCMP for the supply of necessaries (one day only)					x					
authorized by the Minister									x	

	Alberta	B.C.	Manitoba	N.B.	Nfld.	N.S.	Ontario	P.E.I.	Quebec	Sask.
OPTIONAL SATURDAY CLOSING			x[9]	x[10]			x[11]	x[10]	x[12]	x13
POWERS OF MUNICIPALITIES										
May order closing irrespective of Act			x			x	x			x
May regulate and control days and hours of operation by by-law	x	x[14]	x[15]	x	x					x
May designate tourist area or season				x			x			
OFFENCES										
Minimum fine 1st offence			$1,000	$200	$25				$100	
2nd offence	$2,000[16]		$10,000[17]		$100				$400[17]	
3rd offence or more	$5,000[16]				$500					
Maximum fine 1st offence	$2,000[16]	$10,000	$10,000	$1,000	$500	$15,000	$10,000	$1,000	$5,000	$10,000
2nd offence	$5,000[16]		$50,000[17]		$1,000				$10,000[17]	$20,000
3rd offence or more	10,000[16]				$2,000[18]					

EXPLANATORY NOTES FOR TABLE

1. Restricted to 4 employees serving the public (and in British Columbia in an area of less than 225 m^2)
2. Restricted to 3 employees (and in Ontario in an area of less than 2,400 $ft.^2$)
3. Where a majority of sales are milk and cream products.
4. Restricted to the period from April 1 to November 30 in the same year.
5. If fashioned by a Quebec artist or artisan and sold by the artist or the association of which s/he is a member.
6. Where no more than 2 people are employed at one time and no more than 6 in the 24 hours.
7. Where a tourist establishment licence, issued under the Tourism Act, R.S.O. 1980, c.507, has been obtained.
8. Where authorized by the Minister.
9. If the store owner owns more than one store, the option to close on Saturday must be exercised for all stores.
10. The Act allows the option of closing on any alternate day of the week for reasons of conscience or religion (in New Brunswick under special permit only).
11. Restricted to 7 employees and an area of less than 5,000 $ft.^2$
12. Restricted to 3 employees and under authority of the Minister only.
13. Restricted to stores of 560 m^2 or less and only for reasons of religion.
14. The authority to enact by-laws is subject to approval by referendum.
15. Municipal authority applies only to areas designated as vacation resort areas by the Lieutenant Governor in Council.
16. These amounts are prescribed as the fines which may be imposed by a municipality for breaching a municipal closing by-law.
17. The 2nd offence penalty applies only where the 2nd offence occurs within 2 years of the 1st offence.
18. And/or 6 months imprisonment.

CONCLUSION

The above table and comparisons reveal that with few exceptions, there is little commonality in the way different provinces observe Sunday and holiday closings of retail stores. The most significant differences occur in relation to the degree of authority granted to municipalities under the acts to enact by-laws in relation to store closings. Also important are the differences in the way the various acts have and have not made provision for retailers whose religious day of observance is not Sunday. Finally, significant differences arise in relation to the restrictions imposed by some provinces on the number of employees and floor area of stores that are allowed to be open.

To a certain extent these differences appear to be arbitrary. Certainly it is not clear why automobile sales should specifically be allowed in Saskatchewan and Quebec, but not in other provinces. On the other hand, opinions about the importance or value attached to Sunday and holiday closings will vary among provinces and even among municipalities within a province. This range of viewpoints may be what is reflected in many of the differences observed.

FOOTNOTES

[1] Manitoba, Nova Scotia, Ontario and Saskatchewan.

[2] R. v. Big M Drug Mart, [1985] 1 S.C.R. 295

[3] Edwards Books and Art v. The Queen, [1986] 2 S.C.R. 713.

[4] "Manitoba stores face stiff fines," Globe and Mail, 27 February 1987.